TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 79.

MATILDA R. BEASLEY AND JOSEPH C. BEASLEY, APPELLANTS,

vs.

THE TEXAS AND PACIFIC RAILWAY COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 27, 1902.

(18,597.)

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a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1901, and held in the court room of said court in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

MRS. MATILDA R. BEASLEY ET AL., Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellee. } No. 1141.

Be it remembered that heretofore to-wit., on the 13th day of March, 1902, a transcript of the record of the above styled cause from the circuit court of the United States for the western district of Louisiana was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following to-wit:

1 *Bill of Complaint.*

Circuit Court of the United States in and for the Western District of Louisiana.

MRS. MATILDA R. BEASLEY, Plaintiff,
versus
THE TEXAS AND PACIFIC RAILROAD COMPANY, Defendant. } In Equity. No. 241.

To the honorable the judges of the circuit court of the United States for the western district of Louisiana, in equity, sitting at Shreveport, in said district:

Mrs. Matilda R. Beasley of Shreveport, La., and a citizen of the State of Louisiana, herein joined, aided and authorized by her husband, Joseph C. Beasley, of Shreveport, La., and a citizen of the State of Louisiana, who has no conflicting interest, brings this her bill against the Texas and Pacific Railroad Company, a corporation organized under and by virtue of certain acts of the Congress of the United States, to-wit:

"An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and other purposes, ap-

proved March 3d, 1871; and an act supplementary thereto, approved March 2d, 1872."

And thereupon your orator complains and says:

1st. That she is the owner in her own separate right of a large plantation in the parish of Caddo, in said western district of Louisiana, situated on the right descending bank of Red river, in a rich alluvial district.

2d. That in the year 1899 a corporation organized under the laws of Louisiana with its domicile at Shreveport, under the name of the Texarkana, Shreveport and Natchez Railway Company, with G. W. Fouke as president, was engaged in constructing a railway from Texarkana, in the State of Texas, to the city of Shreveport, Louisiana.

3d. That the route of said railroad traversed your orator's plantation for a distance of one (1) and five-eighths (⅝) miles, and through the land of her friend, W. F. Dillon, for a distance of four and a half miles (4½), and that the right of way through these lands was well worth more than six thousand dollars ($6,000.00).

2 4th. That in order to secure said right of way through all of said lands, the said Texarkana, Shreveport and Natchez Railway Company entered into a contract of purchase from orator of a right of way through orator's land for the consideration of five hundred dollars ($500.00) and the further consideration that said railway company shall establish and build and maintain a depot and platform, and a switch and side track to be not less than fifteen hundred (1500) feet in length at such point upon said strip of land so conveyed as might be designated by your orator; and the further consideration that the said grantee or its assigns shall not build or establish or permit to be built or established any other depot along the line of said railroad within three miles north or south of the one above stipulated for, as will be seen by a duly certified copy of said act of sale, hereto annexed and made a part of this bill, and that the said W. F. Dillon thereupon signed and executed a deed of sale of the right of way through his lands above mentioned without other costs to said grantee than the considerations above stipulated in favor of your orator.

5th. That under said contract the said grantee built its road over said lands and established and built a depot and switch at Uni station on said plantation, and your orator spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built or established in less than the distance of three miles.

6th. That there is no public necessity or demand for any depot within said limits.

7th. That on the 9th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company sold said railroad from Texarkana to Shreveport with all of its right of way and other property and franchises to the Texas and Pacific Railroad Company, a corporation organized under the acts of Congress of the United States, above recited in the beginning of this bill.

8th. That said Texas and Pacific Railroad Company purchased said railroad and right of way and franchises subject to the obligations and stipulations contained in the said act of sale from your orator and is bound by the same not to build, operate or establish a depot on said railroad within three miles of said depot at Uni station.

3 9th. That in violation of said contract and obligation, the said Texas and Pacific Railroad Company is now constructing a depot on said railroad at a point called Belcher within less than three miles, to-wit: about one and one-eighth (1⅛) miles from the said depot at Uni station on orator's plantation, and unless restrained and enjoined by the order and process of this court it will proceed to build and operate said depot in violation of said contract, and that your orator will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract, amounting to more than fifty thousand dollars ($50,000.00), which loss and destruction of her property will be irreparable and for which she has no adequate remedy at law, and that this suit arises under the laws of the United States within the meaning of the act of Congress of March 3d, 1875, as amended by the acts of Congress of March 3d, A. D. 1887, and August 13th, A. D. 1888. To the end, therefore, that your orator may have that relief which she can only obtain in a court of equity, and that the said defendant may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived, she now prays the court:

That your honors grant unto your orator your writ of injunction commanding said Texas and Pacific Railroad Company and all persons claiming to act under its authority, direction or control, to absolutely desist and refrain from building or operating said depot at Belcher or at any point on said railroad within three miles of the depot at Uni station on your orator's land until such time as your honors shall appoint and direct and order herein; and that upon such hearing the writ herein prayed for be made and confirmed until the final determination of this suit, and that thereupon the said injunction may be made perpetual.

And that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require.

May it please your honors to grant to your orator a writ of subpœna, to be directed to the said Texas and Pacific Railroad Company, represented by Robert Strong of New Orleans, Louisiana, and Wise & Herndon, their attorneys, of Shreveport, Louisiana, thereby commanding it at a certain time, and under a certain penalty, therein to be limited, personally to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and

4 abide by such order, direction and decree as may be made

against him in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

SUTHERLIN & HALL,
Solicitors for Complainants.

UNITED STATES OF AMERICA, }
Western District of Louisiana. }

On this, the 14th day of November, 1901, before me, the undersigned authority, personally appeared Mrs. Matilda R. Beasley and her husband, Joseph C. Beasley, the complainants in the foregoing bill, who, after being by me first duly sworn, declare and say that they have read the foregoing bill of complaint and know the contents thereof and that the same is true of their own knowledge, except as to matters therein stated on information and belief, and as to those matters they believe it to be true.

MATILDA R. BEASLEY
JOE C. BEASLEY.

Sworn to and subscribed to before me on this 14th day of November, 1901.

FRANK J. LOONEY,
Notary Public.

(Indorsed:) Filed Nov. 18th, 1901. R. L. Larkin, d'y clerk.

Sale of Right of Way Annexed to Bill of Complaint.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day before me, Lewis E. Carter, a notary public in and for the parish of Caddo, and State of Louisiana, duly commissioned and qualified, came and appeared Mrs. Matilda R. Beasley, wife of Joseph C. Beasley, joined, assisted and authorized herein by her said husband, resident in Caddo parish, aforesaid, who declared that she does by these presents, grant, bargain, sell, convey, and deliver, with full guarantee of title and complete transfer and subrogation of all rights and actions of warranty, against all former proprietors of the property herein conveyed unto the Texarkana, Shreveport and Natchez Railway Company, a corporation organized under the laws of Louisiana, with its domicile in Shreveport, La., herein represented by G. W. Fouke, president, the following described property, situated in Caddo parish, La., to-wit: A strip or belt of land one hundred feet in width across the plantation owned by this vendor, in said parish of Caddo, known as Uni plantation, said belt of land being about one and one-half miles in length, and containing as an area nineteen acres, more or less, said belt traversing that part of section eight (8), township twenty (20), range fourteen (14), lying south of Coushatta chute and Red bayou, and that part of

section seventeen (17), same township and range, lying east of Red bayou and along the line already surveyed and located by said railway company for a track of railroad already under construction from Texarkana into Caddo parish, aforesaid, with this proposed objective point, Shreveport, La.

To have and to hold said described property unto said railway company and its assigns, as long as the railroad is maintained and operated over and along the said strip of belt of land.

The consideration of the above and foregoing transfer and conveyance is declared to be the sum of five hundred dollars, cash in hand paid, the receipt of which is hereby acknowledged, and the further consideration that the said railway company shall establish and build and maintain, as long as the railroad shall be operated along and over the said belt of land, a depot and cotton platform, and a switch and side track, to be not less than fifteen hundred feet in length, at such point upon said strip of land herein conveyed as shall be designated by this grantor.

And it is declared that a further consideration of the above transfer is and shall be that said grantee or its assigns shall not build or establish or permit to be built, or establish any other depot along the line of said railroad within three miles north or south of the one above stipulated for on the land herein conveyed and that the railroad that shall be made and built along and over the land herein conveyed, shall be so built and maintained *so* as not to obstruct the drainage of the land of this grantor, lying along and contiguous to the lands herein conveyed.

It is hereby agreed by and between the parties hereto that the word depot as used in reading the foregoing clause shall be understood to mean a building containing a freight room and suitable waiting room for the accommodation of freight and passengers, and where an agent shall be kept and maintained, to operate a telephone and telegraph line with suitable instruments therefor and to sell passengers tickets and sign bills of lading and to be a place where all regular passenger trains are to stop without flag-ing.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in the city of Shreveport,
6 Caddo parish, Louisiana, in the presence of T. F. Bell and J. B. Slattery, competent witnesses, on this the 19th day of April, A. D. 1899.

M. R. BEASLEY.

I authorize,

J. C. BEASLEY.
TEXARKANA, SHREVEPORT & NATCHEZ RAILWAY CO.
G. W. FOUK, *President.*

Witnesses:

T. F. BELL.
J. B. SLATTERY.

LEWIS E. CARTER, *Notary Public.*

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear- on file and of record in my office.

Give- under my hand and seal of office this 13th day of November, 1901.

F. C. O'LEARY,
[SEAL.] *D'y Clerk and ex-Officio Recorder.*

(Indorsed:) Filed November 18th, 1901. R. L. Larkin, d'y clerk.

Restraining Order.

In the Circuit Court of the United States for the Western District of Louisiana.

MRS. MATILDA R. BEASLEY and HUSBAND }
vs. } In Equity.
TEXAS & PACIFIC RAILWAY COMPANY. }

Whereas, in the above named cause it has been made to appear upon the bill of the complainant, filed herein, and the exhibits annexed thereto, and the affidavits of complainants attached thereto, that a writ of injunction preliminary to the final hearing is proper, and that *prima facie* the complainant is entitled thereto, enjoining the defendant herein from the acts complained of and threatened to be committed.

Now, on motion of the said complainant, it is ordered that the defendant appear before the circuit court of the United States, for the western district of Louisiana, in the fifth circuit, at the
7 court room of said court at Shreveport, Louisiana, upon the day of November 29th, 1901, at 10 o'clock a. m. of said day, and then and there show cause, if any it has, why the preliminary injunction therein prayed for should not issue, and it appearing to the undersigned circuit justice of the fifth circuit that there is danger of irreparable injury being caused to the complainant before the hearing of said application can be heard, unless the defendant is, pending such hearing, restrained, as hereinafter set forth.

Therefore, complainant's application for such restraining order is granted upon its giving a bond with two good and sufficient sureties, to be approved by the clerk of this court, in the penal sum of five hundred dollars, securing the defendant against all loss and damage which may result from the issue of said order, if it should be determined that the same is improperly issued.

Now, therefore, it is ordered that you, the said Texas (&) Pacific Railroad Company, your agents, servants, and attorneys, and all persons acting by or under your authority or direction, be and you

are hereby specially restrained and enjoined from building or operating a depot within three miles of the depot at Uni station, Belcher or any other point on said railroad, within said distance, until the further order of this court.

It is further ordered that a copy of this order, certified under the hand of the clerk and the seal of this court, be served on said defendant, to be restrained thereby.

It is further ordered that the bond to be furnished in the case be approved and accepted by clerk of the U. S. circuit court, at Shreveport, La. Dated this 15th day of November, 1901.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed November 18th, 1901. R. L. Larkin, d'y clerk.

8 *Defendant's Demurrer to Plaintiffs' Bill of Complaint.*

In the Circuit Court of the United States for the Western District of Louisiana.

MRS. MATILDA R. BEASLY, Plaintiff,
vs.
THE TEXAS & PACIFIC RAILWAY COMPANY, Defendant. } In Equity.

The demurrer of the above named defendant, The Texas & Pacific Railway Company, to the bill of complaint of the above named plaintiff.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are herein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

First. That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant, for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction, and further, there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law.

Wherefore, this defendant doth demur to said bill, and prays the judgment of this honorable court, whether it shall be compelled to make any answer to said bill, and it humbly prays to be hence dismissed, with its reasonable costs in this behalf sustained.

T. J. FREEMAN,
HOWE, SPENCER & COCKE,
LEONARD, RANDOLPH & RENDALL,
WISE & HERNDON,
Solicitors and Counsel for the Defendant, The Texas & Pacific Railway Company.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

T. J. FREEMAN,
Of Counsel for the Defendant, The Texas & Pacific Railway Co.

THE STATE OF TEXAS, }
County of Dallas. }

J. W. Everman, being duly sworn, deposes and says that
9 he is assistant general manager of the defendant, The Texas and Pacific Railway Company, and authorized to make this affidavit; that the foregoing demurrer is not interposed for delay.

J. W. EVERMAN.

Sworn to before me this the 5th day of December, A. D. 1901.

W. H. COPE,
Notary Public, Dallas Co., Texas.

(Indorsed:) Filed Dec. 12th, 1901. R. L. Larkin, d'y clerk.

Decree of Court Sustaining Defendant's Demurrer to Plaintiff's Bill of Complaints.

MRS. MATILDA R. BEASLY
vs.
THE TEXAS AND PACIFIC RY. CO. } No. 241. Eq.

This day coming on to be heard this cause upon the demurrer of the defendant, The Texas and Pacific Railway Company, filed herein on the 12th day of December, 1901. After hearing arguments of counsel, the court is of the opinion that said demurrer was well taken and same is in all things sustained, and the court so orders, adjudges and decrees.

It is therefore further ordered that the injunction heretofore granted be and the same is hereby dissolved and vacated and complainant's bill dismissed.

This 20th day of February, 1902.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed Febr'y 20th, 1902. W. Jackson, clerk.

10 *Plaintiff's Motion for Appeal from said Decree.*

In the United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY & Husband, Joseph C. Beasley, Complainants,
vs.
THE TEXAS & PACIFIC RAILWAY COMPANY. } No. 241. In Equity.

To the Honorable Aleck Boarman, district judge and one of the judges of the above named court, presiding therein:

The above named complainants in the above entitled cause, Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, conceiving themselves ag-rieved by the order and decree made and entered in the above entitled cause on the 20th day of February, A. D. 1902, at this term of said court, wherein and whereby it was ordered, adjudged and decreed that the demurrer filed by defendants that the said complainants were without right to the writ of injunction on the equity side of the court and that complainants were without right to relief in equity, as prayed for in the bill of complaint, but the complainants' only relief was for damages in an action at law, be sustained and that said bill of complaint be dismissed, do hereby appeal from said order and decree of the 20th day of February, A. D. 1902, rendered therein at this term of said court to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors filed herein, and they pray that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order and decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit.

Dated February 27th, A. D. 1902.

MATILDA R. BEASLY,
JOSEPH C. BEASLY,
Complainants.
SUTHERLIN AND HALL,
Solicitors for Complainants and of Counsel.

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

11 *Plaintiff's Assignment of Error.*

United States Circuit Court of Appeals, Fifth Circuit.

MRS. MATILDA R. BEASLY and Husband, Joseph C. Beasly,
vs.
TEXAS & PACIFIC RAILWAY COMPANY.
No. 241. In Equity.

On appeal from the United States circuit court, western district of Louisiana, Shreveport division.

Now come the complainants, Mrs. Matilda R. Beasly and husband, Joseph C. Beasly, and file the following assignment of errors, on which they will rely on their appeal from the decree made by this honorable court at this term on the 20th day of February, A. D. 1902, in the above entitled cause, to-wit:

1. That the said court erred in sustaining the demurrer interposed and filed by defendants to plaintiff's bill in equity and dismissing said bill, and by holding and deciding that complainants have no right to the relief in equity, as prayed for in said bill, but that complainants have only an action at law for damages.

Wherefore, complainants pray that the judgment of said court be reversed, and that said demurrer be overruled, and that said case be remanded with directions to reinstate the same and to proceed according to law.

SUTHERLIN & HALL,
Solicitors for Complainants and of Counsel.

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

12 *Order Allowing Appeal.*

At a stated term, to-wit: the February term, A. D. 1902, of the circuit court of the United States of America, of the fifth judicial circuit, in and for the western district of Louisiana, held at the courtroom in the city of Shreveport, State of Louisiana, on the 27th day of February, A. D. 1902.

Present: The Honorable Aleck Boarman, district judge, and one of the judges of said circuit court, sitting therein.

MRS. MATILDA R. BEASLY and Husband, Joseph C. Beasly,
vs.
TEXAS & PACIFIC RAILWAY COMPANY.
No. 241. In Equity.

On reading and filing the petition of complainants herein, Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, for an order al-

lowing an appeal, and the assignments of errors herein made and filed by said complainants and appellants.

On motion of Sutherlin and Hall, solicitors and of counsel for complainants and appellants, it is ordered that an appeal to the United States circuit court of appeals for the fifth circuit, from the final decree heretofore filed and entered herein at this term of said court, sustaining defendant's demurrer to complainants' bill in equity, be, and the same hereby is allowed, defendant's counsel being present in open court, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States court of appeals.

It is further ordered that the bond on appeal be fixed at the sum of one hundred dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done and signed, after having been read in open court, on this February 27th, A. D. 1902.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

13 *Bond on Appeal.*

United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY and Husband, Joseph C. Beasley,
vs.
TEXAS & PACIFIC RAILROAD COMPANY. } No. 241. In Equity.

Know all men by these presents: That we, Matilda R. Beasley and husband, Joseph C. Beasley, of Shreveport, Caddo parish, Louisiana, as principal, and William F. Dillon, of Shreveport, Caddo parish, Louisiana, are held and firmly bound unto the Texas and Pacific Railroad Company in the sum of one hundred dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs and executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated at Shreveport, Louisiana, on this 27th day of February, A. D. 1902.

Whereas, the above named Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, have prosecuted an appeal to the United States circuit court of appeals for the fifth circuit, to reverse the decree rendered in the above entitled suit by the circuit court of the United States for the western district of Louisiana.

Now, therefore, the condition of this obligation is such that if the above named Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, complainants and appellants, shall prosecute said appeal to effect, and answer all costs and damages that may be adjudged or

awarded against them if they fail to make said appeal and plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

M. R. BEASLEY.
J. C. BEASLEY.
W. F. DILLON.

Attest:
C. M. WALKE.
W. J. BAYERSDOFFER.

Taken and approved by me on this 27th day of February, A. D. 1902.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

14 *Minutes of Court.*

SHREVEPORT, LOUISIANA,
THURSDAY, *February 20th*, 1902.

MRS. M. R. BEASLEY
vs.
TEXAS & PACIFIC RY. } No. 241.

This cause came on this day to be heard upon the demurrer filed by the defendant, and after argument *at* (by) counsel the court sustained the demurrer and dissolved the injunction. (See decree.)

SHREVEPORT, LOUISIANA,
THURSDAY, *February 27th*, 1902.

MRS. M. R. BEASLEY
vs.
TEXAS & PACIFIC RY. } No. 241.

Application for appeal filed and appeal granted. (See decree.)

15 *Præcipe for Transcript.*

In the United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY and Husband, Joseph C. Beasley,
vs.
TEXAS AND PACIFIC RAILROAD COMPANY. } No. 241. In Equity.

To the clerk of the above entitled court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States circuit court of

appeals for the fifth judicial circuit, under the appeal hereto perfected to said court and include in said transcript the following pleadings, proceedings and papers on filt (file), to-wit:

1. Bill of complaint.
2. Sale of right of way annexed to bill of complaint.
3. Restraining order.
4. Defendant's demurrer to plaintiffs' bill of complaint.
5. Decree of court sustaining defendant's demurrer to plaintiffs' bill of complaint.
6. Plaintiffs' motion for appeal from said decree.
7. Plaintiffs' assignment of error.
8. Order allowing appeal.
9. Bond for appeal.
10. Minutes of court.

Said transcript to be prepared, as required by law, and the rules of this court and the rules of the United States circuit court of appeals for the fifth circuit, and on file in the office of the clerk of the said circuit court of appeals within thirty days.

Dated at Shreveport, Louisiana, February 27th, A. D. 1902

SUTHERLIN AND HALL,
Solicitors and of Counsel for Complainants.

(Indorsed:) Filed Febr'y 27th, 1902. E. C. Jackson, d'y clerk.

16 *Clerk's Certificate of Transcript.*

In the United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY and Husband, Joseph C. Beasley,
vs.
TEXAS AND PACIFIC RAILROAD COMPANY.
} No. 241. In Equity.

I, Walter Jackson, clerk of the circuit court of the United States of America, of the fifth judicial circuit, in and for the western district of Louisiana, do hereby certify the foregoing pages numbered from 1 to 22 inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return on complainants' appeal.

I further certify that the cost of the foregoing return on said appeal is $6.25, and that same has been paid by complainants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this the 5th day of March, A. D. 1902.

W. JACKSON,

[SEAL.] *Clerk United States Circuit Court, Western District of Louisiana.*

17 United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1901, April 30, 1902.

(Extract from Minutes.)

MATILDA R. BEASLEY ET AL.
vs.
TEXAS & PACIFIC RAILWAY COMPANY. } No. 1141.

This cause was regularly called this day and submitted to the court after argument by Mr. W. P. Hall for appellants and by Mr. W. W. Howe, for appellee.

November Term, 1901, May 13th, 1902.

(Extract from Minutes.)

MRS. MATILDA R. BEASLEY ET AL.
vs.
TEXAS & PACIFIC RAILWAY COMPANY. } No. 1141.

This cause came on to be heard on the transcript of the record, from the circuit court of the United States for the western district of Louisiana, and was argued by counsel.

On consideration whereof. It is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby reversed, and this cause remanded to said circuit court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity, and without prejudice to any action at law to which the complainants, as advised by counsel may think themselves entitled.

It is further ordered, adjudged and decreed that the appellee The Texas & Pacific Railway Company be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

18 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1901.

Filed May 13, 1902. Charles H. Lednum, Clerk.

MRS. MATILDA R. BEASLEY ET AL., Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellee. } No. 1141.

Appeal from the U. S. circuit court, western district of Louisiana.

Before Pardee, McCormick, and Shelby, circuit judges.

Mrs. Matilda R. Beasley, complainant in the circuit court, appellant here brought her bill against the Texas & Pacific Railway Company and therein alleged.

1st. "That she is the owner in her own separate right of a large plantation in the parish of Caddo, in said western district of Louisiana, situated on the right descending bank of Red river, in a rich alluvial district.

2nd. That in the year 1899 a corporation organized under the laws of Louisiana with its domicile at Shreveport. under the name of the Texarkana, Shreveport and Natchez Railway Company, with G. W. Fouke as president, was engaged in constructing a railway from Texarkana, in the State of Texas, to the city of Shreveport, Louisiana.

3rd. That the route of said railroad traversed your orator's plantation for a distance of one (1) and five-eight-s (⅝) miles, and through the land of her friend, W. F. Dillon, for a distance of four and a half miles (4½), and that the right of way through these lands was well worth more than six thousand dollars ($6,000.00).

4th. That in order to secure said right of way through all of said lands the said Texarkana, Shreveport and Natchez Railway Company entered into a contract of purchase from orator of a right of way through orator's land for the consideration of five hundred dollars ($500.00) and the further consideration that said railway company shall establish and build and maintain a depot and platform, and a switch and side track to be not less than fifteen hundred feet in length at such point upon said strip of land so conveyed as might be designated by your orator; and the
19 further consideration that the said grantee or its assigns shall not build or establish or permit to be built or established any other depot along the line of said railroad within three miles north or south of the one above stipulated for, as will be seen by a duly certified copy of said act of sale, hereto annexed and made a part of this bill and that the said W. F. Dillon thereupon signed and executed a deed of sale of the right of way through his lands above mentioned without other costs to said grantee than the considerations above stipulated in favor of your orator.

5th. That under said contract the said grantee built its road over said lands and established and built a depot and switch at Uni station on said plantation, and your orator spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built or established in less than the distance of three miles.

6th. That there is no public necessity or demand for any depot within said limits.

7th. That on the 9th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company, sold said railroad from Texarkana to Shreveport with all of its right of way and other property and franchises to the Texas & Pacific Railroad Company, a corporation organized under the acts of Congress of the United States, above recited in the beginning of this bill.

8th. That said Texas & Pacific Railroad Company purchased said railroad and right of way and franchises subject to the obligations and stipulations contained in the said act of sale from your orator

and is bound by the same not to build, operate or establish a depot on said railroad within three miles of said depot at Uni station.

9th. That, in violation of said contract and obligation the said Texas and Pacific Railway Company is now constructing a depot on said railroad at a point called Belcher, within less than three miles, to-wit; about one and one-eight- (1⅛) miles from the said depot at Uni station on orator's plantation, and unless restrained and enjoined by the order and process of this court, it will proceed
20 to build and operate said depot in violation of said contract and that your orator will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract, amounting to more than fifty thousand dollars ($50,000.00) which loss and destruction of her property will be irreparable and for which she has no adequate remedy at law, and that this suit arises under the laws of the United States within the meaning of the act of Congress of March 3rd, 1875, as amended by the acts of Congress of March 3rd, A. D. 1887, and August 13th A. D. 1888."

The prayer of the bill was for an injunction *pendente lite* to be in due course made perpetual.

The Texas & Pacific Railway Company appeared and filed a demurrer to the bill and for cause of demurrer showed,

"That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant, for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction, and further there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law."

This demurrer was heard and on argument was sustained by the circuit court, and thereupon the complainant's bill was dismissed.

Whereupon, the complainants sued out this appeal, assigning as error the ruling on the demurrer.

PARDEE, circuit judge, delivered the opinion of the court:

As the circuit court rendered an absolute decree dismissing the bill, which would probably bar proceedings instituted at law for the recovery of damages, it is probable that the court in hearing the demurrer allowed other causes of demurrer to be orally assigned in addition to the cause assigned upon the record. The rule permitting this is thus declared in Bates Federal Procedure vol. 1, section 204
as follows:
21 "A defendant is not limited to one cause of demurrer, but may assign as many causes as his counsel may deem proper, either to the whole bill or to each part of the bill demurred to; and if any one of the causes assigned be held good by the court the demurrer will be allowed. And the defendant may on the argument, at the hearing, orally assign other causes of demurrer, different or in addition to those assigned upon the record, which if valid will

support the demurrer, although the causes of demurrer stated upon the record be held to be invalid."

In this court the appellee urges in support of the decree appealed from that the bill is defective because one of the original contracting parties, the Texarkana, Shreveport & Natchez Railway Company, is not made a party; that the complainant has a complete and adequate remedy at law; and, that the contract as alleged, in so far as it stipulates and restricts as to the location of depots along the line of railway, is contrary to public policy and void. As there is no averment that the Texarkana Shreveport & Natchez Railway Company is doing anything or proposes to do anything in violation of its contract with complainant and no relief is prayed against said railway company or affecting it, it does not seem to be a necessary party to the suit, and if it is a necessary party, the defect can be cured by amendment to the bill.

It is not clear that the complainant has, for the wrong alleged, a complete and adequate remedy at law. Damages are not always easily ascertained and sometimes do not and cannot adequately compensate. A remedy which prevents a threatened wrong is in its essential nature nearer adequate and complete than a remedy which permits the wrong to be done and then attempts to compensate by damages assessed by a jury. See Pom. Eq. Jur. vol. 3, section 1357.

These remarks are pertinent to the case in hand for the bill alleges only indirect and remote damages and the case presented seems to be one in which before a jury it would be very difficult to point out and prove much if any actual damage. However, in the matter of damages from the threatened wrong in this case, if the bill is defective in not being sufficiently specific or in not alleging direct damage the complainant might perhaps amend, and before
22 her bill should be dismissed, on that sole ground, she should be given an opportunity to amend.

The objection based on public policy presents the real difficulty in maintaining this bill. The appellee as owner and operator of the Texas Shreveport & Natchez Railway Company is a public common carrier, operating public franchises, and is under duties and obligations to the State and public. Operating in Louisiana and under a Louisiana charter. it is, by article 284 of the Louisiana constitution of 1898, subject as to the building and location of depots (and in many other matters) to the control of the Louisiana Railway Commission. Aside from this, it is bound in the public interest and in its own interest to establish such stations and build and locate such depots along and near the railroad as the convenience to the public, the transaction of business and the rapid and economical transportation of goods and passengers may require.

In Texas & Pacific Railway Company *vs.* Scott was involved the right of the railway company to abandon a depot originally located, constructed and maintained in consideration of the right of way granted, and this court said:

"It must be that such an agreement is made subject to the general exigencies of business, the public interests, and to the change, modi-

fication and growth of transportation routes, as these may affect the requirements of the railway company's business." 23 C. C. A. 424, 429.

In Florida Central &c. R. R. Co. *v.* State *ex rel.* Tavares, 31 Fla. 509, in dealing with a restrictive contract as to the location of railroad depots, the supreme court of Florida well says on principle and authority:

"We can not admit that an individual is entitled to call for the interference of a court of equity to compel a railroad company to locate unchangeably its depot at a particular spot to subserve the private advantages of such individual. Railroad companies in order to fulfill one of the ends of their creation—the promotion of the public welfare—should be left free to establish and re-establish their depots wheresoever the accomodation of the wants of the public may require. To grant the relief asked for by the complainant, we would regard as against public policy."

In People *ex rel. vs.* Chicago & Alton R. R. Co. 130 Ill. 175, the court says: "It is in recognition of the paramount duty of railway companies to establish and maintain their depots at such points and in such manner as to subserve the public necessities and convenience, that it has been held by all the courts with very few exceptions, that contracts materially limiting their power to locate and re-locate their depots are against public policy, and therefore void." The same doctrine was announced by Ch. J. Shaw, in Fuller *vs.* Dame, 18 Pick. 472; and also in St. Jos. & D. C. R. R. Co. *vs.* Ryan 11 Kansas 602; Pacific R. R. Co. *vs.* Seeley 45 Mo. 212; Currie *vs.* Natchez, Jackson & C. R. R. Co. 61 Miss. 725. In Mobile & Ohio R. R. Co. *vs.* The People 132 Ill. 559, the court says: "The location of stations for the receipt and discharge of passengers and freight at points most desirable for the convenience of travel and business being indispensable to the efficient operation of a railroad and the enjoyment of it by the public, the railway company cannot be compelled on the one hand, to locate stations at points where the cost of maintaining them will exceed the profits resulting therefrom to the company nor allowed, on the other hand, to locate them so far apart as to practically deny to the communities on the line of the road reasonable access to its use. A railway company cannot be compelled to maintain or continue a station at a point when the welfare of the company and the community in general requires that it should be changed to some other point. A railway company cannot bind itself by contract with individuals, to locate and maintain stations at particular points or to not locate and maintain them at other points. The company must be left free to establish and re-establish its depot wherever the public welfare or wants of the public may require." The same doctrine is held in Holladay *vs.* Patterson 5 Oregon 177, in which case the court says: "A railroad company is a quasi public corporation and the public have an interest in the location of their lines of roads and depots. An agreement which tends to lead persons charged with the performance of trusts

or duties for the benefit of others, to violate or betray them
24 will not be enforced."

In Texas & Pacific Railway Company *vs.* Marshall, it is held that a contract to forever maintain a terminus, shops and offices at a particular place without regard to the business of the company and the interests of the public is not one to be enforced in a court of equity. 136 U. S. 393.

The present bill alleges "that there is no public necessity or demand for any depot within said limits," *i. e.:* within three miles north and south of Uni station; but we take this to be largely a conclusion of the pleader and not to be taken as conclusively admitted by the demurrer. Whether or not the interest of the public or the railway company demands a depot within the said limits is a question involving facts and judgment which a court of equity under proper allegations might perhaps deal with, but which in our opinion, should be left to the determination of the officials of the railway company under the regulations of the railroad commission. It is not probable, and certainly not to be assumed on a naked allegation, that the railway company will voluntarily locate and build a depot not believed by the officials of the company to be necessary for the transaction and furtherance of the railway's business or the just and proper convenience of the public.

In Texas & Pacific Railway Company *vs.* Marshall, *supra*, a case much relied upon by both parties, there is an intimation that while equity will not grant relief in cases of this kind, there may be a remedy at law in an action for damages.

It would seem that where under a contract, which is in part contrary to public policy, a valuable consideration in the way of property has passed, that the courts should not deny all relief and thus allow one party to be enriched at the expense of another not guilty of actual turpitude; and it has been held that where under a contract absolutely void because unlawful a valuable property has been transferred, while no action based on the contract will lie to recover the property, still the right of recovery may be permitted in a proper case based on a disaffirmance of the contract because of the
desire of the courts to do justice as far as possible to the
25 party who has made payment or delivered property under a
void agreement which in justice he ought to recover. See Pullman Car Co. *vs.* Central Transportation Co. 171 U. S. 138.

The real question presented in the court below and renewed in this court is whether the complainant for the matters alleged in her bill can have relief in a court of equity, and it is only incidentally involved here as to whether the complainant for the same matters can have relief in a court of law.

For the reasons given, we are of opinion that the complainant can have no remedy in equity. As to the right to a remedy elsewhere we express no opinion further than as herein outlined.

The decree appealed from is absolute as to the dismissal of the bill, and as it may be considered a bar to an action at law, it is ordered and adjudged that said decree be reversed, and the cause re-

manded to the circuit court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity and without prejudice to any action at law to which the complainant as advised by counsel may think herself entitled.

26 *Assignment of Errors.*

In the Supreme Court of the United States.

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellees.
No. 1141.

On appeal from the United States circuit court of appeals for the fifth circuit.

In equity.

And now come the complainants, Mrs. Matilda R. Beasley and husband Joseph C. Beasley and file the following assignment of errors on which they will rely on their appeal from the decree and judgment made and rendered by the United States circuit court of appeals for the fifth circuit at this term of said court, on the 13th day of May, A. D. 1902, in the above entitled cause, to-wit:

(1.) That the said United States circuit court of appeals for the fifth circuit erred in said decree and judgment in this, in holding and deciding that the complainants were without right to the writ of injunction on the equity side of the court and that complainants were without right to relief in equity as prayed for in the bill of complaint and that the United States circuit court for the western district of Louisiana, Shreveport division, from the judgment of which court sustaining the defendant's special demurrer to complainants' bill in equity for want of jurisdiction in equity the appeal was taken by complainants to the said United States circuit court of appeals, fifth circuit, was without jurisdiction to entertain said bill of complaint or grant or perpetuate the injunction on the equity side of said court as prayed for; and in holding and deciding that complainants' only relief is by action at law for
27 damages; and in remanding said case to said circuit court of the United States for the western district of Louisiana, Shreveport division, with instructions to said court to enter a decree dismissing said bill of complaint for want of jurisdiction in said United States circuit court for the western district of Louisiana, Shreveport division, to entertain said suit, or to grant or perpetuate said injunction on the equity side of said court.

Wherefore complainants pray that the said judgment and decree of the United States circuit court of appeals for the fifth circuit be reversed, and that this case be remanded to the United States cir-

cuit court for the western district of Louisiana, Shreveport division, with instructions to overrule defendant's special demurrer to plaintiffs' bill of complaint and to reinstate said case, and to revive and reinstate the injunction therein and further proceed therein according to law.

SUTHERLIN & HALL,
Solicitors for Complainants and of Counsel.

Endorsed: Assignment of errors. Filed May 19, 1902. Charles H. Lednum, clerk.

28 *Petition for Appeal.*

In the United States Circuit Court of Appeals, Fifth Circuit.

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Complainants, Appellants,
vs.
THE TEXAS & PACIFIC RAILWAY COMPANY, Appellees. } No. 1141.

On appeal from the United States circuit court for the western district of Louisiana, Shreveport division.

In equity.

To the honorable the judges of the United States circuit court of appeals for the fifth circuit:

The above named complainants and appellants in the above entitled cause, Mrs. Matilda R. Beasley and husband Joseph C. Beasley, conceiving themselves aggrieved by the final judgment, order and decree rendered and made and entered in the above entitled cause by the United States circuit court of appeals for the fifth circuit, on the 13th day of May, A. D. 1902, at this term of said court, wherein and whereby it was ordered, adjudged and decreed that the complainants were without right to the writ of injunction on the equity side of the court and that complainants were without right to relief in equity as prayed for in the bill of complaint and that complainants' only relief was for damages in an action at law and that this case be remanded to the United States circuit court for the western district of Louisiana, Shreveport division with instructions to enter a decree dismissing the bill of complaint for want of jurisdiction in equity, without prejudice to complainants' right of action at law for damages, do hereby appeal from said final judgment, order and decree rendered, made and entered in said case on the 13th day of May, A. D. 1902, at this term of said court, to the honorable Supreme Court of the United States, on the grounds and for the reasons specified and set forth in the assignment of errors, filed herein and that the defendant, The Texas & Pacific Railway Company, is a corporation created organized and

chartered under an act of Congress entitled "An act to incorporate the Texas & Pacific Railway Company, and
29 to aid in the construction of its road and other purposes," approved March 3rd, 1871, and an act supplementary thereto approved March 2nd 1872 and that this is a suit arising under the laws of the United States within the meaning of the act of Congress of March 3rd, 1875, as amended by the acts of Congress of March 3rd, 1887 and August 13th, 1888; and that the said judgment rendered in this suit on appeal by the United States circuit court of appeals for the fifth circuit is not a final judgment within the meaning of section six (6) of the act of Congress entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes" approved March 3rd, 1891, and that the matter in controversy in said case exceeds one thousand dollars besides costs; and that they are entitled to an appeal from said judgment rendered in said case as aforesaid by said United States circuit court of appeals to the honorable Supreme Court of the United States.

Wherefore they pray that this their appeal from the said judgment of the United States circuit court of appeals for the fifth circuit may be allowed to the honorable Supreme Court of the United States, and that the original restraining order and injunction granted in this case be revived and reinstated and continued in force until final hearing on said appeal, without additional bond; and that a transcript of the record papers and proceedings on which said decree and judgment were made and rendered, duly authenticated, may be sent to the Supreme Court of the United States; and so they will ever pray.

MRS. M. R. BEASLEY,
J. C. BEASLEY.
Per W. P. HALL. *Att'y,*
Complainants.

SUTHERLIN & HALL,
Solicitors for Complainants and of Counsel.

Endorsed: Motion for appeal Filed May 19, 1902. Charles H. Ledlum, clerk.

30 *Order Allowing Appeal.*

At a stated term, to-wit: the November term A. D. 1901, of the United States circuit court of appeals for the fifth circuit, held at the court room in the city of New Orleans, State of Louisiana, on the — day of May, A. D. 1902.

Present: The honorable the judges of said co urt, sitting therein

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY.
No. 1141.

In equity.

On reading and filing the petition of complainants herein, Mrs. Matilda R. Beasley and husband Joseph C. Beasley for an order allowing an appeal, and the assignment of errors, herein made and filed by said complainants and appellants.

On motion of Sutherlin & Hall solicitors and of counsel for complainants and appellants, it is ordered that an appeal to the Supreme Court of the United States from the final judgment and decree heretofore on May 13th A. D. 1902, by this court rendered, entered and filed herein, be and the same is hereby allowed: and that a certified transcript of the record and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of five hundred dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done and signed after having been read in open court on this May 19th, A. D. 1902.

DON A. PARDEE, *Judge.*

Endorsed: Order allowing appeal. Filed May 19, Charles H. Lednum clerk.

31 *Bond on Appeal.*

In the United States Circuit Court of Appeals, Fifth Circuit.

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellees.
No. 1141.

In equity.

Know all men by these presents that we Matilda R. Beasley and husband, Joseph C. Beasley, of Shreveport, Caddo parish, Louisiana, as principal, and William F. Dillon of Shreveport, Caddo parish, Louisiana, as surety, are held and firmly bound unto the Texas & Pacific Railway Company in the sum of five hundred dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and legal representatives jointly and severally by these presents.

Sealed with our seals and dated at Shreveport, Louisiana, on this May 21st, A. D., 1902.

Whereas the above named Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, have prosecuted an appeal to the United States Supreme Court to reverse the decree and judgment rendered in the above entitled suit by the *the* United States circuit court of appeals for the fifth circuit.

Now therefore the condition of this obligation is such that if the above named Mrs. Matilda R. Beasley and husband Joseph C. Beasley, complainants and appellants shall prosecute said appeal to effect and answer all costs and damages that may be adjudged or awarded against them in case they fail to make said appeal and plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

M. R. BEASLEY.
J. C. BEASLEY.
W. F. DILLON.

Attest:
CHAS. L. GAINES.
T. F. BELL, Jr.

32 *Acknowledgement.*

STATE OF LOUISIANA, }
Caddo Parish. }

Be it remembered that on this 21st day of May, A. D. 1902, before me S. L. Herold, a notary public in and for the parish and State above written, personally appeared Mrs. Matilda R. Beasley and her husband Joseph C. Beasley and William F. Dillon, to me well known to be the identical persons who executed and signed the above and foregoing bond on appeal, and they acknowledged to me that they executed and signed the same for the uses and purposes therein expressed.

Witness my signature and seal of office on this May 21st, A. D. 1902.

S. L. HEROLD,
[SEAL.] *Notary Public in and for Caddo Parish, State of Louisiana.*

STATE OF LOUISIANA, }
Caddo Parish. }

Before me S. L. Herold, notary public in and for Caddo parish, Louisiana, personally appeared William F. Dillon a resident of said parish and State, who after being duly sworn, says on oath that he is the surety on the above and foregoing bond on appeal and that he is worth and owns property of the value of twenty thousand dollars and more, over and above his exemptions and liabilities.

W. F. DILLON.

Sworn to and subscribed before me on this May 21st, A. D. 1902.

S. L. HEROLD,
Notary Public, Caddo Parish, La.

Approval of Bond on Appeal.

The above and foregoing bond on appeal is taken and approved by me in open court at New Orleans La., on this May 22, A. D. 1902.

DON A. PARDEE,
Judge United States Circuit Court of Appeals, Fifth Circuit.

Endorsed: Bond on appeal. Filed May 22, 1902. Charles H. Lednum, clerk.

33 THE UNITED STATES OF AMERICA:

Circuit Court of Appeals of the United States, Fifth Circuit.

The President of the United States to the Texas & Pacific Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within 30 days from date hereof, pursuant to an order of appeal filed in the clerk's office of the United States circuit court of appeals for the fifth circuit wherein Matilda R. Beasley and Joseph C. Beasley are appellants and The Texas and Pacific Railway Company is appellee to show cause, if any there be, why the judgment rendered against the said Matilda R. Beasley and Joseph C. Beasley as in said order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 22d day of May in the year of our Lord one thousand nine hundred and two.

DON A. PARDEE,
Circuit Judge.

Service accepted for appellee.

HOWE, SPENCER & COCKE,
Att'ys for T. & P. Ry. Co.

[Endorsed:] United States circuit court of appeals 5th circuit. No. 1141. Matilda R. Beasley *et al. vs.* Texas & Pacific Railway Company. Citation of appeal. Filed May 22 1902 Charles H. Lednum clerk of the United States circuit court of appeals.

34 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 34 pages, numbered from *a* to 33, inclusive, contain a true copy of the record, assignment of errors, and all proceedings had, except that

the original citation on appeal is included therein instead of a copy thereof, in the case of—

MRS. MATILDA R. BEASLEY ET AL., Appellants,
versus
TEXAS & PACIFIC RAILWAY COMPANY, Appellee. } No. 1141.

as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 24th day of May A. D. 1902.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No. 18,597. U. S. C. C. of appeals, 5th circuit. Term No. 79. Matilda R. Beasley and Joseph C. Beasley, appellants, *vs.* The Texas & Pacific Railway Company. Filed June 27", 1902.

FILE COPY.

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Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 79.

MATILDA R. BEASLEY AND JOSEPH C. BEASLEY,
Appellants,

vs.

THE TEXAS AND PACIFIC RAILWAY COMPANY.

Appeal From the United States Circuit Court of Appeals for the Fifth Circuit.

FILED JUNE 27, 1902. (18,597.)

BRIEF OF PLAINTIFF AND APPELLANT.

E. B. KRUTTSCHNITT,
W. P. HALL,
Solicitors.

CAUCASIAN & CARNEY BROS., SHREVEPORT, LA.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 79.

MATILDA R. BEASLEY AND JOSEPH C. BEASLEY,
Appellants,

vs.

THE TEXAS AND PACIFIC RAILWAY COMPANY.

Appeal From the United States Circuit Court of Appeals for the Fifth Circuit.

FILED JUNE 27, 1902. (18,597.)

BRIEF OF PLAINTIFF AND APPELLANT.

E. B. KRUTTSCHNITT,
W. P. HALL,
Solicitors.

The plaintiff filed her bill in equity in the United States Circuit Court for the Fifth Circuit and the Western District of Louisiana, wherein she alleged that the Texarkana, Shreveport and Natchez Railway Company traversed her plantation, situated on the right bank of Red River, in Caddo parish, Louisiana,

tor a distance of one and five-eighths miles, and the land of her friend, W. F. Dillon, for a distance of four and a half miles, and that the right of way through these lands was worth six thousand dollars;

That in order to secure the right of way through said lands the said railway company gave her five hundred dollars, and as a further consideration it agreed to build and maintain a depot on said lands of petitioner, and as a further consideration it agreed "that said grantee or its *assigns* shall not build or establish any other depot along the line of said railroad within three miles north or south of the one above stipulated for." (Italics ours.)

That under said contract the said railroad company built its road over said lands and built a depot at Uni station on her plantation, and your orator spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built within the said limit of three miles;

That there is no public necessity or demand for any depot within said limits;

That on the 5th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company sold said railroad with all of its rights of way and franchises to The Texas and Pacific Railroad Company, a corporation organized under the Act of Congress of March 3, 1871, and Act of March 2, 1872;

That said Texas and Pacific Railway Company purchased said railroad subject to the obligations and stipulations contained in the said act of sale from your orator and is bound by the same

not to build a depot on said railroad within three miles of Uni station.

That in violation of said contract and obligation, the Texas and Pacific Railroad Company is now constructing a depot on said railroad at a point called Belcher, within less than three miles, to-wit, about one and one-eighth miles from the said depot at Uni station on orator's plantation, and unless restrained by injunction the depot will be built and operated and she will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract amounting to more than fifty thousand dollars, "which loss and destruction of her property will be irreparable and for which she has no adequate remedy at law, and that an injunction is necessary to preserve her rights." Record p. 1.

The defendant company appeared and filed a special demurrer to the jurisdiction of the court on the ground:

"First, That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant, for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction, and further there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law." Record p. 7.

This demurrer to the jurisdiction of the court as a court of equity was argued and sustained by the court and complainant's bill dismissed, and she appealed to the Circuit Court of Appeals for the Fifth Circuit, and assigned as error—

"1. That the said court erred in sustaining the demurrer interposed and filed by defendants to plaintiff's bill in equity and dismissing said bill, and by holding and deciding that complainants have no right to the relief in equity, as prayed for in said bill, but that complainant's have only an action at law for damages." Record pp. 8, 10.

The Court of Appeals, after hearing the case, reversed the judgment of the Circuit Court, but rendered practically the same decree, the only change being a reservation of complainants' right to sue for damages if any she had. Record p. 14.

From this judgment complainants appealed to this Honorable Court and assigned as error the decree and judgment of said United States Court of Appeals in sustaining said demurrer and in holding that complainants were without right to the writ of injunction on the equity side of the Court and that complainants were without right to relief in equity as prayed for in the bill of complaint, and in holding that complainants' only relief was by a naction at law, and in ordering that said bill be dismissed by the Circuit Court for the Western District of Louisiana for want of jurisdiction to entertain said suit on the equity side of the Court.

ARGUMENT.

It will be observed that the defendant did not demur to plaintiff's suit on its merits and did not raise the question whether she had disclosed a cause of action, but demurred solely to the *jurisdiction of the Court to hear the matter addressed to it on the equity side.* So that no question of the legality of the contract

declared upon by the plaintiff was before the Court, but the only question was one of equity jurisdiction.

The question is not whether the Court after hearing her on the merits will grant her any relief, but whether she has the right to be heard.

The case of Marshall vs. Texas and Pacific Railway Company, 136 U. S. p. 393, is relied upon by the defendant, but it really supports plaintiff and appellant. In that case, which was somewhat similar, the Court refused after a hearing on the merits to grant the injunction prayed for; but it *exercised jurisdiction* of the case in passing upon the question of the right of the city to the injunction. The Court found that the railroad had substantially complied with its contract and refused the injunction. In doing this it heard the case on the equity side.

It is not the way it decided the case, whether for or against the plaintiff, that is important, but it is the fact tha it heard and decided he case at all, that shows that such cases are properly presented to the equity side of the Court.

It is true the Court suggested that if the city had any other rights they might be enforced in an action at law for damages. So in this case. If the Court should find, after hearing plaintiffs' demand for an injunction, that it can not be granted, it can refuse it, and if it thinks plaintiffs might still be entitled to damages it could, as in that case, suggest a suit at law.

But what we insist upon is that we have the right to be heard upon the equity side of the Court when we apply for an injunction; that the equity side alone has the right to grant or refuse an injunction.

If the defendant had demurred to the petition and set up that it disclosed no reason in law or equity why an injunction should issue, the Court would have passed upon the question presented and have sustained or overruled the demurrer; but instead of this, it demurs that the equity side of the Court has no jurisdiction to pass upon the question of our right to an injunction. If the equity court has no jurisdiction to pass upon our demand for an injunction, no other court has such jurisdiction; and to so hold would be to say that there is no court in which the plaintiffs can appear and have their claims passed upon.

It may be that when the Court comes to pass upon the merits of the case it will find that they are not entitled to an injunction, but that is no reason why it should not exercise the jurisdiction to pass upon the question.

We submit that the Court erred in construing the Marshall case above cited as holding that the equity side of the Court was without jurisdiction to hear and decide the question of a right to an injunction, when, in fact, the Court did exercise such jurisdiction in that very case.

The allegations of the plaintiff's bill must all be considered in connection. She alleges that the real estate would, in effect be destroyed and that the injury will be irreparable. The building of a rival depot so near will cause the destruction of the value of the improvements and of the land itself and this is, in effect, the destruction of the property.

This is a Louisiana contract, affecting Louisiana property and is governed by Louisiana law.

The Code of Practice, Art. 296, is in these words: "Injunc-

tion, or prohibition, is a mandate obtained from a court, by a plaintiff, prohibiting one from doing an act which he contends may be injurious to him or impair a right which he claims."

Art. 298 provides that: "The injunction must be granted and directed against the defendant himself, in the following cases:

"3. When the defendant has commenced some *building* or some other works on a real estate, the ownership or possession of which is contested by the plaintiff or pretends that such building or works would *be injurious to his interest.*" (Italics ours.)

These are broad terms and clearly cover the case at bar. The idea is that wherever the right to *build* is involevd that an injunction will lie to prevent it.

And generally an injunction may issue in Louisiana to prevent any act which if performed would give rise to an action for damages. Slaughter House Co. vs. Larrieux, 30 A. 799.

In Levy vs. Waterworks Co., 38 Annual p. 29, the Supreme Court of Louisiana said: "The codal provisions of our practice touching injunctions are broader and more comprehensive than the rules of the chancery courts and include causes for injunctions that would not be sanctioned in a common law court."

But if we turn from our own State to the jurisprudence of the Federal Courts we find our right to the equitable remedy of injunction resting upon the firmest foundation.

To defeat the equity jurisdiction of the Court, it is not sufficient that there should be a *remedy at law*, but it must be a plain, adequate, *practical* and *effectual* remedy.

Now, the remedy which the defendant suggests in argument

is a suit for damages for the building of a rival depot, and therefore a rival town. It would be difficult to conceive of a case where the remedy at law would be more incomplete, inefficient, inadequate and impracticable.

The amount of damages would be wholly conjectural. Nobody could tell which town would finally prevail in the field of competition. All that any witness could do in advance would be to express an opinion.

And if plaintiffs waited and each year brought suit for the damage already done, it would require a multiplicity of suits as well as still be largely a matter of conjecture as to how much of a town they might have built and how much they might have made by the sale of town lots, etc. In such cases the remedy at law serves none of the requirements of the rule.

We make the following quotations from the courts and text writers, defining and applying the rule, and we submit that they fully justify plaintiffs in applying to a court of equity for relief:

"It is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity." Boyce's Executors vs. Grundy, 3 Peters, 215.

To bar equitable relief the legal remedy must be equally effectual with the equitable remedy as to all of the rights of the complainant. Where the remedy at law is not as practicable and efficient to the ends of justice and its prompt administration, the aid of equity may be invoked." Lewis vs. Cocks, 23 Wallace, 470.

"The jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is

as efficient as the remedy which equity would confer under the same circumstances." Killburn vs. Sunderland, 130 U. S. 514.

Mr. Pomeroy in his Equity Jurisprudence, Sec. 1357, Vol. 3: "Judges have been brought to see, and to acknowledge, contrary to the opinion of Chancellor Kent, that the common law theory of not interfering with persons until they shall have actually committed a wrong is fundamentally erroneous; and that a remedy which prevents a threatened wrong is, in its essential nature, better than a remedy which permits a wrong to be done and then attempts to pay for it by the pecuniary damages which a jury may assess."

In the case of Payne vs. Kansas & A. Val. R. R., 46 Federal Reporter, p. 553, the railroad company, having expropriated a right of way over plaintiff's land for terminals for its railroad bridge, undertook to use the same as a passage way for persons and vehicles to reach the same bridge converted into an ordinary toll bridge, and thereby seriously affected plaintiff's ferry privileges on the river beneath. The plaintiff applied to the court of equity for an injunction and was met by a demurrer to the jurisdiction on the ground that he had an adequate remedy in a suit at law for damages. In that case Justice Parker said, at page 553:

"It seems to need but a moment's reflection to satisfy the mind that equity, in a case of this kind, is more efficient to secure the ends of justice and its prompt administration than law; that greater justice may be more promptly secured by an appeal to equity, that the wrong may be stopped in its inception, rather than compel the injured party, or the party about to be injured, to wait

until all the wrong is done, and then drive him to his action at law, to get damages in reparation of a wrong of a repeated and continuing character, when the amount of damages is estimable only by conjecture, and not by any accurate standard."

If this had been written for the case at bar it could not have been more fittingly expressed.

The learned judge quotes the Supreme Court of Pennsylvania as declaring, in Cam vs. Railroad Company, 24 Pa. St. 159, "that courts will interfere by injunction to prevent wrongs of a repeated and continuing character, but which occasion damages which are estimable only by conjecture, and not by any accurate standard, *and in this is what is meant by irreparable damages, or mischief, in injunction cases.*" (Italics ours).

These authorities would appear to be conclusive of the case, but the strongest decision and the one in which the facts were most like the case at bar is yet to be cited.

We refer to the case of Walla Walla vs. Walla Walla Water Company, 172 U. S. pp. 1-11. This was a bill in equity filed by the water company to enjoin the city of Walla Walla and its officers from erecting water works, on the ground that such an act would be a violation of the contract between the city and the water company, by which the company was to lay mains in the streets of the city and supply it with water, the city agreeing that until the company substantially failed in its duty, the city should not erect, maintain or become interested in any water works except the plaintiff's. The city demurred to the jurisdiction of the court of equity and upon this question the Court, at p. 11, through Mr. Justice Brown, said:

"3. The objection that a court of equity has no jurisdiction because the plaintiff has a complete and adequate remedy at law, is equally untenable. Obviously it has no present remedy at law, since the city has done nothing in violation of its covenant not to erect competing water works, and the water company has as yet suffered no damage. It is true that after the city has gone to the great expense of erecting a plant of its own and of entering into competition with the plaintiff company, the latter would doubtless have a remedy at law for breach of the covenant. In the meantime, great, perhaps irreparable, damage would have been done to the plaintiff. What the measure of such damage was would be exceedingly difficult of ascertainment and would depend largely upon the question whether the value of plaintiff's plant was destroyed or merely impaired. It would be impossible to say what would be the damage incurred at any particular moment, since such damage might be more or less dependent upon whether the competition of the city should ultimately destroy, or only interfere, with the business of the plaintiff.

"This Court has repeatedly declared in affirmance of the generally accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. 3 Peters, 210, 215; 13 Wallace, 616, 621; 130 U. S. 505, 514; 143 U. S. 79, 95.

"Where irreparable injury is threatened, or the damage be if such a nature that it can not be adequately compensated by an action at law, or is such as, from its continuance, to occasion a constantly recurring grievance, the party is not ousted of his

remedy by injunction. In such a case as this, the remedy will save to one party or the other a large pecuniary loss—to the city, if it be obliged to pay to the plaintiff damages occasioned by the establishment of its competing works—to the plaintiff, if it be adjudged that the city has a right to do so.

"But it is further insisted in this connection that, under section 8 of the contract, the city had the right at any time to take and condemn the water works of the company, and that in case of such condemnation, the contract should not be taken into consideration in estimating the value of the water works; and hence that if the city elected to establish water works of its own, without condemning those of the plaintiff company, the value of such water works would furnish the proper measure of damages in such action. This agreement necessarily assumes, however, that the damages in such action would be the same as in a proceeding for condemnation. Perhaps, if the plaintiff company were forced to abandon its works entirely by the competition of the city, the value of such works might furnish the measure of its compensation; but it could not be forced to do this, and if the company elected not to abandon, but to enter into competition with the city, the damages would have to be estimated by the probable injury done to the company by such competition. This, as above indicated, would furnish a most uncertain basis."

What is here so well said by the Court is conclusive of the case at bar. In that case where the damages would arise from having competing water works, the Court refused to send the plaintiff to an action for damages, as there was no standard by which they could be fixed, they would be continued, estimative

and conjectural. The remedy was neither adequate, complete, practical nor efficient to the ends of justice and its prompt administration, as the remedy in equity and the latter was maintained.

So in the case at bar. The damages will arise from building a competing depot and town within 1 1-8 miles of plaintiffs' town at Uni, and as it grows it will impair the value of the town lots and the rental value of the stores and other improvements. But there is no standard by which such damages can be fixed. They are continued, estimative and conjecutral. The remedy at law is neither effectual, practical nor does it tend to the prompt administration of justice.

Every consideration that justified the Court's decision in that case would justify a similar decision in the case at bar.

But it may be contended that the plaintiffs' allegation (for jurisdictional purposes) that they would be damaged more than fifty thousand dollars, shows that the amount of damages are fixable and determinate. But it shows nothing of the kind.

It would be difficult to conceive of a more indefinite statement ,as there is no upward limit at all.

But how does this show that the amount can be fixed? Does the defendant concede that this is the amount of the damages plaintiffs will suffer?

We doubt if the defendant would concede that we will be damaged to the amount of even ten thousand dollars.

Now, if we had alleged that the amount of damages had been fixed or were ascertainable by some standard or from some penal contract, there might be some merit in the contention. But the mere allegation that we would be damaged more than a certain

sum, fixed nothing. The amount is still as much a matter of conjecture, of opinion, of estimate, as if no such allegation had been made? Is the defendant bound by it in an action for damages? Has it admitted that the amount there stated is correct?

The contention is not worthy of serious consideration.

These considerations and authorities seem to have satisfied the Court of Appeals that the Circuit Court was in error in holding that an action at law for damages was an adequate remedy.

The Court said: "It is not clear that the complainant has, for the wrong alleged a complete and adequate remedy at law. Damages are not always easily ascertained, and sometimes do not and cannot adequately compensate. A remedy which prevents a threatened wrong is in its essential nature nearer adequate and complete than a remedy which permits the wrong to be done aand then attempts to compensate by damages assessed by a jury. See Pom. Eq. Jur. Vol 3, Sec. 1357." Record p. 17.

But instead of reversing the judgment and decree which the Court thus found to be erroneous, it (the Court) raised a question not raised in the demurrer and not discussed in argument in the Court below or on appeal.

The Court finding that the demurrer alleging an adequate remedy at law was not sustainable, said that the defendant could at the hearing orally assign other grounds of demurrer and if the Court found them sufficient the bill would be dismissed and remarked that it was probable that the Court below allowed other grounds to be assigned since it rendered a judgment that would probably be a bar to any further action at law. Record p. 16.

However probable this may have appeared to the Court, it was not a fact.

No oral assignment of additional grounds of demurrer was made in either Court. Indeed, the Court of Appeals does not intimate that any such oral assignment of ground for the demurrer was made or argued before it.

The Court quotes Bates Federal Practice, Vol. 1, Sec. 204 as its authority. Bates says: "And the *defendant* may, on the argument, at the hearing orally assign other causes of demurrer, different or in addition to those assigned upon the record, which if valid will support the demurrer, although the causes of demurrer stated upon the record be held to be invalid." (Italics ours.)

Giving to this rule its fullest effect, at most it only permits the *defendant* to add to his demurrer other grounds orally in the argument.

It does not authorize the *Court* to originate and supply such additional grounds on a mere suppostiion that they may have been urged in some other court when in fact they have not been so urged, and when the fact that they were not urged on appeal, so far from making it probable that they were urged in the lower Court, ought to have satisfied the Court that they were not so urged.

We submit that the Court can not add to the demurrer by supposing the defendant has done so in some other court.

But if this Court is of the opinion that the question of the legality of the contract was properly raised by the Court of Appeals (though not by the defendant) we concede that such agree-

ments are subordinate to the public convenience and the courts so hold; but where no public interest or convenience requires it there is no reason why the courts should interfere to declare them null and void.

The bill alleges "that there is no public necessity or demand for any depot within said limits." Record p. 2.

Here again the Court assumes that this is largely a conclusion of the pleader and not to be taken as conclusively admitted by the demurrer. And why not? We submit that it is not a conclusion of law but a distinct statement of a fact. How else could it be stated more plainly? It is an assertion of a negative fact. Would it be necessary to give the number of people and amount of traffic in detail? All of that would properly come up in the evidence at the trial.

The Court says it is a conclusion of the pleader. It is no more a conclusion than is the statement of the plaintiff in a revocatory action that his debtor is "insolvent" or that he is "without means to pay his debts"; must he set forth the amount of the debts and the assets in detail? Must we set forth in detail just how many people wanted the depot and how many did not?

The Court does not say that it is a conclusion *of law* but only that it is a conclusion of the pleader.

The very object of a demurrer is to test the question whether admitting the facts to be as stated, the relief prayed for could be granted.

It is distinctly stated in the bill as a fact that there is no public necessity or demand for a depot. The bill alleges that it is proposed to build the depot within a mile and an eighth of the

depot at Uni. Is the statement that there is no public necessity or demand for it unreasonable?

Is it unreasonable or a mere conclusion of the pleader to say that there is no public necessity or demand for a depot in a mile and an eighth of another in a sparsely settled country where depots are usually from six to ten miles apart?

The railroad does not pretend that there is any public necessity or demand for this depot, and makes no such additional assignment of ground for demurrer. The contract is not immoral in itself, and if voidable is not utterly void. The railroad by pleading and proving that necessity or public convenience required it, would be relieved, but it has not asked to be relieved, and the case is not one where the courts should interfere to declare a contract null and void on its own motion, as thre is nothing in it contrary to good morals.

If it had been suggested in the lower Court that our allegation that there was no public necessity or demand for the depot was not to be taken for true we would have offered to amend by stating in full and in detail how it is that the railroad is about to build this depot so near to the other, and if the case should be remanded to the Circuit Court with leave to amend under Equity Rule 35, we will amend by alleging the facts which are these: There is much ill feeling and rivalry between complainant's husband and a neighbor whose business partner is a member of the Railway Commission of Louisiana, and the proposition to build a depot at Belcher was repeatedly presented to the Railway Commission by this member and voted down as unnecessary by a majority vote, but finally after a change of one of the members it

was ordered against the objection and protest of the defendant railroad company, which rather than antagonize the Railway Commission yielded a reluctant assent to the requirement.

We will allege and prove that this neighbor, whose business partner is a member of said Commission, is largely interested in a plantation at Belcher and was and is urgent for the building of this depot for the benefit of his property, and that finally before ordering the depot to be built the Commission telegraphed to the defendant railroad company and asked if it would build the depot if ordered and the company replied that it would be a great hardship to have to build another depot so close to the one already built, but it would have to do it.

We would allege and prove that the railroad does not wish to build the depot, that it does not regard it as at all necessary, that it opposed it repeatedly before the Railroad Commission and finally submitted to the requirement rather than antagonize the Commission and engage in litigation. We would allege and prove that the depot at Uni is ample for the needs of the community and that there is no public necessity or demand for it as we have alleged.

Art. 284 of the Louisiana Constitution, defining the powers of the Railway Commission, gives the Commission power "to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are necessary at stations," and we would allege and prove, besides being unnecessary as already alleged, that Belcher is not "a station."

By the Court's raising the question on appeal and declaring our allegations to be mere conclusions of the pleader, we have

been denied the equitable right given by Rule 35 to amend our bill and state more fully the facts upon which we rely for relief.

If the railroad as a quasi-public institution had found it necessary to build this depot we concede its right to do so, but where the power of the Railway Commission is being used in a private rivalry between neighbors and the railroad is forced to build and maintain a depot where none is required, we ask in all earnestness that the Court allow all of the facts to be heard before shutting the door against a petition addressed to the equity powers of the Court.

We respectfully ask and pray that the demurrer be overruled and the suit be remanded to the Circuit Court with leave to amend, and to be proceeded with as may be ordered.

Respectfully submitted,

E. B. KRUTTSCHNITT,

W. P. HALL,

Solicitors for Complainant.

W. P. Hall.

E. B. Kruttschnitt

Solicitors for Complainant

& Appellant.

Supreme Court of the United States

OCTOBER TERM, 1892.

No. 70.

MATILDA R. BEASLEY and JOSEPH C. BEASLEY,

Appellants,

against

THE TEXAS AND PACIFIC RAILWAY COMPANY.

BRIEF ON BEHALF OF THE TEXAS AND PACIFIC RAILWAY COMPANY.

WILLIAM WIRT HOWE,
JOHN F. DILLON,
WALKER B. SPENCER,
For the Texas and Pacific Ry. Co.

C. G. Burroughs, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 79.

MATILDA R. BEASLEY and JOSEPH C. BEASLEY,
Appellants,

AGAINST

THE TEXAS AND PACIFIC RAILWAY COMPANY.

Brief on Behalf of the Texas and Pacific Railway Company.

Mrs. Matilda R. Beasley, joined and authorized by her husband, Joseph C. Beasley, brought her bill in equity in the Circuit Court of the United States for the Western District of Louisiana against The Texas and Pacific Railway Company, alleging substantially as follows:

1st. That she is the owner in her own separate right of a large plantation in the Parish of Caddo, in said Western District of Louisiana, situated on the right descending bank of Red River, in a rich alluvial district.

2d. That in the year 1899 a corporation organized under the laws of Louisiana with its domicile at Shreveport, under the name of the Texarkana, Shreveport and Natchez Railway Company, with G. W. Fouke as president, was engaged in constructing a railway from Texarkana, in the State of Texas, to the city of Shreveport, Louisiana.

3d. That the route of said railroad traversed complainants' plantation for a distance of one (1) and five-eighths (⅝) miles, and through the land of her friend, W. F. Dillon, for a distance of four and a half miles, and that the right of way through these lands was well worth more than six thousand dollars ($6,000.)

4th. That in order to secure said right of way through all of said lands, the said Texarkana, Shreveport and Natchez Railway Company entered into a contract of purchase from orator of a right of way through orator's land for the consideration of five hundred dollars ($500) and the further consideration that said railway company shall establish and build and maintain a depot and platform, and a switch and side track to be not less than fifteen hundred (1,500) feet in length at such point upon said strip of land so conveyed as might be designated by complainant; and the further consideration that the grantee or its assigns shall not build or establish or permit to be built or established any other depot along the line of said railroad within three miles north or south of the one above stipulated for, as will be seen by a duly certified copy of said act of sale, annexed and made a part of this bill, and that the said W. F. Dillon thereupon signed and executed a deed of sale of the right of way through his lands

above mentioned without other costs to said grantee than the consideration above stipulated in favor of complainant.

5th. That under said contract the said grantee built its road over said lands and established and built a depot and switch at Uni station on said plantation, and complainant spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built or established in less than the distance of three miles.

6th. That there is no public necessity or demand for any depot within said limits.

7th. That on the 9th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company sold said railroad from Texarkana to Shreveport with all of its right of way and other property and franchises to the Texas and Pacific Railroad Company, a corporation organized under the Acts of Congress of the United States.

8th. That said Texas and Pacific Railroad Company purchased said railroad and right of way and franchises subject to the obligations and stipulations contained in the said act of sale from complainant, and is bound by the same not to build, operate or establish a depot on said railroad within three miles of said depot at Uni station.

9th. That in violation of said contract and obligation, the said Texas and Pacific Railroad Company is

now constructing a depot on said railroad at a point called Belcher within less than three miles—to-wit: about one and one-eighth miles from the said depot at Uni station on complainant's plantation, and unless restrained and enjoined by the order and process of this Court it will proceed to build and operate said depot in violation of said contract, and that complainant will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract, amounting to more than fifty thousand dollars; which loss and destruction of her property will be irreparable, and for which she has no adequate remedy at law, and that this suit arises under the laws of the United States within the meaning of the Act of Congress of March 3d, 1875, as amended by the Acts of Congress of March 3d, A. D. 1887, and August 13th, A. D. 1888.

Tr., pages 2, 3.

The act of sale referred to in the bill of complaint is found at pages 4 and 5.

The Texas and Pacific Railway Company appeared and filed a demurrer, and, for cause of demurrer, showed:

"That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction; and, further, there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law."

Tr., p. 7.

After hearing and argument, the demurrer was sustained, the restraining order dissolved and vacated, and the complainant's bill dismissed.

Tr., p. 8.

Thereupon, the complainants took an appeal to the United States Circuit Court of Appeals for the Fifth Circuit (p. 10), and, after hearing and argument, the Appellate Court rendered the opinion found at pages 14 to 20, and made the following decree:

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Louisiana, and was argued by counsel:

"On consideration whereof. It is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed, and this cause remanded to said Circuit Court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity, and without prejudice to any action at law to which the complainants, as advised by counsel, may think themselves entitled.

"It is further ordered, adjudged and decreed that the appellee The Texas & Pacific Railway Company be condemned to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court."

Tr., p. 14.

Thereupon, the complainants presented a petition asking for an appeal to the Supreme Court of the United States, which was allowed by the presiding Judge of the United States Circuit Court of Appeals (p. 23).

Motion to Dismiss.

We ask leave now to present the question whether the above decree of the United States Circuit Court of

Appeals is one of those final decrees from which an appeal will lie to this Court. It will be observed that there was a decree in the Circuit Court of the United States in our favor. That decree was reversed by the Circuit Court of Appeals, and the cause remanded to the court of first instance, with instructions to enter a decree dismissing the bill for want of jurisdiction in equity and without prejudice to any action at law to which the complainants, as advised by counsel, may think themselves entitled, and we were ordered to pay the costs of the appeal to the Court of Appeals. This action by the Court of Appeals was taken in order that the decree in our favor in the court of first instance should not be considered as a bar to an action at law. The cause was sent back to the court of first instance with directions to enter a different decree and with certain new directions as to costs. We submit, therefore, that the decree of the Circuit Court of Appeals was not one of those decrees finally disposing of the case, which are by law appealable to this Court, and upon this point we submit the following authorities:

Moore vs. Robins, 18 Wall., 588.
Greene vs. Fisk, 103 U. S., 518.
Rice vs. Sanger, 144 U. S., 197.
Chicago, &c., Ry. Co. vs. Osborne, 146 U. S., 354.
Brown vs. Baxter, 146 U. S., 619.
Meagher vs. Minn., &c., Co., 145 U. S., 608, 611.
Great Western Tel. Co. vs. Burnham, 162 U. S., 339.

We apprehend that the attention of the Court may be asked at any time to the fact that a decree is not appealable and that if we are right in our contention,

the Court will dismiss the appeal. We, therefore, move that the appeal be dismissed; and we have notified the other side of this motion.

On the Merits.

In case the motion to dismiss be denied, we submit in favor of The Texas and Pacific Railway Company the same points made by us in the Court of Appeals, as follows:

I.

The Texarkana, Shreveport and Natchez Railway Company was not made a party to the bill of complaint, and it is submitted that this was a fatal defect of which the Court may take notice at almost any stage of the proceedings. The contract, which is the basis of the suit, was made by The Texarkana, Shreveport and Natchez Railway Company with the complainant, Mrs. Beasley, and The Texas and Pacific Railway Company was not a party to its celebration. The suit before the Court is really an attempt to specifically enforce a negative contract by means of an injunction. Now, we fail to understand how a negative contract can be enforced by injunction without the presence in the suit of the party with whom the complainant made the contract. It seems to us, on elementary principles, that such corporation is a necessary party to the case, and no reason is given in the bill why it has not been joined.

II.

It is further submitted that the point made in our demurrer, that the Court had no jurisdiction as a court

of equity because the complainant had a full, adequate and complete remedy at law, is a sound one and should be maintained. It is supported by the decision of this Court in the case of the Texas and Pacific Railway Company vs. Marshall, 136 U. S., 393, 405. In that case it was sought to enforce a contract concerning certain railway shops by means of an injunction prohibiting their removal, and it was held that the contract was not one to be enforced in equity but that it was more consonant to justice that the injury suffered by the City of Marshall should be compensated by a single judgment in an action at law, and that on the whole the plaintiff the City of Marshall was not entitled to any relief in a court of equity.

III.

It is further submitted that, even if the foregoing points be overruled, the objection to the plaintiff's case, as held by the Court of Appeals, based on public policy, presents an insuperable obstacle in the way of the complainant. The Texas and Pacific Railway Company, according to the averments of the bill of complaint, is operating the portion of railroad in question under franchises acquired from the Texarkana, Shreveport and Natchez Railway Company, a Louisiana company with a Louisiana charter. Under Article 284 of the Constitution of Louisiana of 1898, the question of the building and location of depots along this particular line is held by the Court of Appeals to be subject to the control of the Louisiana Railway Commission. And, in any event, we are bound, in the public interest as well as our own, to establish such stations and build and locate such depots along and

near the railroad as the public convenience and the rapid and economical transportation of goods and passengers may require. In the case at the bar the Court of Appeals points out that, under many authorities, it would be against public policy to enforce the contract sued upon in this case, as the complainant attempts to do, and the Court reaches the conclusion that the complainant at the bar can have no remedy in equity. We refer to the opinion as printed in the transcript at pages 17–20, and which is also hereto subjoined, and to the following authorities there cited:

The Texas & Pacific Ry. Co. vs. Scott, 23 C. C. A., 424, 429.

Florida, &c., R. R. Co. vs. State, 31 Fla., 509.

People vs. Chicago & Alton R. R. Co., 130 Ill., 175.

Fuller vs. Dane, 18 Pick, 472.

St. Joseph, &c., R. R. Co. vs. Ryan, 11 Kansas, 602.

Chicago R. R. Co. vs. Seeley, 45 Mo., 212.

Curry vs. Natchez, &c., R. R. Co., 61 Miss., 725.

Mobile & Ohio R. R. Co. vs. People, 132 Ill., 559.

Halladay vs. Patterson, 5 Oregon, 177.

Opinion of the Circuit Court of Appeals.

Before PARDEE, McCORMICK, and SHELBY, Circuit Judges, filed May 13, 1902 (Record pp 14–20).

PARDEE, circuit judge, delivered the opinion of the court:

As the circuit court rendered an absolute decree dismissing the bill, which would probably bar proceedings instituted at law for the recovery of damages, it is

probable that the court in hearing the demurrer allowed other causes of demurrer to be orally assigned in addition to the cause assigned upon the record. The rule permitting this is thus declared in Bates Federal Procedure vol. 1, section 204 as follows:

"A defendant is not limited to one cause of demurrer, but may assign as many causes as his counsel may deem proper, either to the whole bill or to each part of the bill demurred to; and if any one of the causes assigned be held good by the court the demurrer will be allowed. And the defendant may on the argument, at the hearing, orally assign other causes of demurrer, different or in addition to those assigned upon the record, which if valid will support the demurrer, although the causes of demurrer stated upon the record be held to be invalid."

In this court the appellee urges in support of the decree appealed from that the bill is defective because one of the original contracting parties, the Texarkana, Shreveport & Natchez Railway Company, is not made a party; that the complainant has a complete and adequate remedy at law; and, that the contract as alleged, in so far as it stipulates and restricts as to the location of depots along the line of railway, is contrary to public policy and void. As there is no averment that the Texarkana Shreveport & Natchez Railway Company is doing anything or proposes to do anything in violation of its contract with complainant and no relief is prayed against said railway company or affecting it, it does not seem to be a necessary party to the suit, and if it is a necessary party, the defect can be cured by amendment to the bill.

It is not clear that the complainant has, for the wrong alleged, a complete and adequate remedy at law. Damages are not always easily ascertained and sometimes do not and cannot adequately compensate. A remedy which prevents a threatened wrong is in its essential nature nearer adequate and complete than a remedy which permits the wrong to be done and then attempts to compensate by damages assessed by a jury. See Pom. Eq. Jur. vol. 3, section 1357.

These remarks are pertinent to the case in hand for the bill alleges only indirect and remote damages and the case presented seems to be one in which before a jury it would be very difficult to point out and prove much if any actual damage. However, in the matter of damages from the threatened wrong in this case, if

the bill is defective in not being sufficiently specific or in not alleging direct damage the complainant might perhaps amend, and before her bill should be dismissed, on that sole ground, she should be given an opportunity to amend.

The objection based on public policy presents the real difficulty in maintaining this bill. The appellee as owner and operator of the Texas Shreveport & Natchez Railway Company is a public common carrier, operating public franchises, and is under duties and obligations to the State and public. Operating in Louisiana and under a Louisiana charter, it is, by article 284 of the Louisiana constitution of 1898, subject as to the building and location of depots (and in many other matters) to the control of the Louisiana Railway Commission. Aside from this, it is bound in the public interest and in its own interest to establish such stations and build and locate such depots along and near the railroad as the convenience of the public, the transaction of business and the rapid and economical transportation of goods and passengers may require.

In Texas & Pacific Railway Company *vs.* Scott was involved the right of the railway company to abandon a depot originally located, constructed and maintained in consideration of the right of way granted, and this court said:

"It must be that such an agreement is made subject to the general exigencies of business, the public interests, and to the change, modification and growth of transportation routes, as these may affect the requirements of the railway company's business." 23 C. C. A. 424, 429.

In Florida Central &c. R. R. Co. *v.* State *ex rel.* Tavares, 31 Fla. 509, in dealing with a restrictive contract as to the location of railroad depots, the supreme court of Florida well says on principle and authority:

"We can not admit that an individual is entitled to call for the interference of a court of equity to compel a railroad company to locate unchangeably its depot at a particular spot to subserve the private advantages of such individual. Railroad companies in order to fulfill one of the ends of their creation—the promotion of the public welfare—should be left free to establish and re-establish their depots wheresoever the accommodation of the wants of the public may require. To grant the relief asked for by the complainant, we would regard as against public policy."

In People *ex rel. vs.* Chicago & Alton R. R. Co. 130 Ill. 175, the court says: "It is in recognition of the paramount duty of railway companies to establish and maintain their depots at such points and in such manner as to subserve to the public necessities and convenience, that it has been held by all the courts with very few exceptions, that contracts materially limiting their power to locate and re-locate their depots are against public policy, and therefore void." The same doctrine was announced by Ch. J. Shaw, in Fuller *vs.* Dame, 18 Pick. 472; and also in St. Jos. & D. C. R. R. Co. *vs.* Ryan 11 Kansas 602; Pacific R. R. Co. *vs.* Seeley 45 Mo. 212; Currie *vs.* Nathez, Jackson & C. R. R. Co. 61 Miss. 725. In Mobile & Ohio R. R. Co. *vs.* The People 132 Ill. 559, the court says: "The location of stations for the receipt and discharge of passengers and freight at points most desirable for the convenience of travel and business being indispensable to the efficient operation of a railroad and the enjoyment of it by the public, the railway company cannot be compelled on the one hand, to locate stations at points where the cost of maintaining them will exceed the profits resulting therefrom to the company nor allowed, on the other hand, to locate them so far apart as to practically deny to the communities on the line of the road reasonable access to its use. A railway company cannot be compelled to maintain or continue a station at a point when the welfare of the company and the community in general requires that it should be changed to some other point. A railway company cannot bind itself by contract with individuals, to locate and maintain stations at particular points or to not locate and maintain them at other points. The company must be left free to establish and re-establish its depot wherever the public welfare or wants of the public may require." The same doctrine is held in Holladay *vs.* Patterson 5 Oregon 177, in which case the court says: "A railroad company is a quasi public corporation and the public have an interest in the location of their lines of roads and depots. An agreement which tends to lead persons charged with the performance of trusts or duties for the benefit of others, to violate or betray them will not be enforced."

In Texas & Pacific Railway Company *vs.* Marshall, it is held that a contract to forever maintain a terminus, shops and offices at a particular place without regard to the business of the company and the interests

of the public is not one to be enforced in a court of equity. 136 U. S. 393.

The present bill alleges "that there is no public necessity or demand for any depot within said limits," *i. e.:* within three miles north and south of Uni station; but we take this to be largely a conclusion of the pleader and not to be taken as conclusively admitted by the demurrer. Whether or not the interest of the public or the railway company demands a depot within the said limits is a question involving facts and judgment which a court of equity under proper allegations might perhaps deal with, but which in our opinion, should be left to the determination of the officials of the railway company under the regulations of the railroad commission. It is not probable, and certainly not to be assumed on a naked allegation, that the railway company will voluntarily locate and build a depot not believed by the officials of the company to be necessary for the transaction and furtherance of the railway's business or the just and proper convenience of the public.

In Texas & Pacific Railway Company *vs.* Marshall, *supra*, a case much relied upon by both parties, there is an intimation that while equity will not grant relief in cases of this kind, there may be a remedy at law in an action for damages.

It would seem that where under a contract, which is in part contrary to public policy, a valuable consideration in the way of property has passed, that the courts should not deny all relief and thus allow one party to be enriched at the expense of another not guilty of actual turpitude; and it has been held that where under a contract absolutely void because unlawful a valuable property has been transferred, while no action based on the contract will lie to recover the property, still the right of recovery may be permitted in a proper case based on a disaffirmance of the contract because of the desire of the courts to do justice as far as possible to the party who has made payment or delivered property under a void agreement which in justice he ought to recover. See Pullman Car Co. *vs.* Central Transportation Co. 171 U. S. 138.

The real question presented in the court below and renewed in this court is whether the complainant for the matters alleged in her bill can have relief in a court of equity, and it is only incidentally involved here as to whether the complainant for the same matters can have relief in a court of law.

For the reasons given, we are of opinion that the complainant can have no remedy in equity. As to the right to a remedy elsewhere we express no opinion further than as herein outlined.

The decree appealed from is absolute as to the dismissal of the bill, and as it may be considered a bar to an action at law, it is ordered and adjudged that said decree be reversed, and the cause remanded to the circuit court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity and without prejudice to any action at law to which the complainant as advised by counsel may think herself entitled.

We submit that the decree of the Circuit Court of Appeals ought to be affirmed.

WILLIAM WIRT HOWE,
JOHN F. DILLON,
WALKER B. SPENCER,
for the Texas & Pacific Ry. Co.

Supreme Court of the United States.

No. 79.—October Term, 1903.

Matilda R. Beasley and Joseph C. Beasley, Appellants, *vs.* The Texas and Pacific Railway Company. } Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

[December 14, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court of Appeals ordering a bill against a railway company incorporated under the laws of the United States to be dismissed. The bill seeks to enjoin the railway company from building a depot within three miles of one already built at Uni in Louisiana, and alleges the following facts: Mrs. Beasley, the first named plaintiff, conveyed to a Louisiana corporation, the Texarkana, Shreveport and Natchez Railway Company, a strip of land, one hundred feet wide, for a railroad track through her plantation, habendum to the company and its assigns so long as the railroad was maintained and operated over the strip. By the act of sale, which was executed by both parties, it was declared to be a part of the consideration for the transfer "that the grantee or its assigns shall not build . . . or establish any other depot along the line of said railroad within three miles north or south of the one stipulated for." The defendant purchased the road from the grantee "subject to the obligations and stipulations contained in" the act of sale. It now is constructing a depot on the road within a mile and a fraction of the one at Uni. The bill further alleges that there is no public necessity for a depot within the stipulated limits. There was a demurrer for the reason that there is an adequate remedy at law, and the demurrer was sustained by the Circuit Court, and the bill dismissed. This decree was reversed by the Circuit Court of Appeals, and the bill was ordered to be dismissed for want of equity without prejudice to an action at law. There is a motion to dismiss the appeal to this Court on the ground that the decree was not final in form, but the decisions are the other way, and the case being one in which the decree of the Circuit Court of Appeals can be reviewed in this Court under the act of March 3, 1891, we have jurisdiction and the motion must be overruled. *Merrill* v. *National Bank of Jacksonville*, 173 U. S. 131. See *Great Western Telegraph Co.* v. *Burnham*, 162 U. S. 339, 342.

The act of sale gives its own definition of the word "depot," but no question is made that the depot intended to be built is within the prohibition of the instrument in that and other respects. We assume that if the plaintiff's grantee had built the structure it would have broken its agreement. We also assume for the purposes of the case, without deciding, that the contract as a contract is not void, although similar contracts have been pronounced void in some of the cases cited below. On these assumptions the question is how far the burden of that agreement passed to the defendant, and whether, at least as against the defendant, equity will require it to be specifically performed.

Such a liability, wherever asserted, would have to be worked out, if at all, in terms of easement, covenant running with the land, implied contract, or equitable restriction.

Although the Louisiana Code recognizes such servitudes "as the prohibition of building on an estate, or of building above a particular height," Rev. Civil Code, Art. 728 (724); see Art. 718, (714,) and although it has been held at common law that such a servitude for the benefit of neighboring land may be created within reasonable limits, and created by words of covenant, *Ladd* v. *Boston*, 151 Mass. 585, 588; *Brown* v. *O'Brien*, 168 Mass. 484, compare La. Rev. Civ. Code, Art. 743, (739,) it was not argued that there was an easement in this case. It would be questionable whether the obligation was "not imposed on the person or in favor of the person, but only on an estate or in favor of an estate;" La. Rev. Civ. Code, Art. 709 (705;) Code Nap. 686; whether it was not in the words of Marcadé, commenting on this article of the Code Napoléon, a *servitude réelle entachée de personnalité*." 2 Marcadé, 627. "There can be no praedial servitude when the object is merely to satisfy the wants of the present owner." Sohm, Inst. Roman Law, Ledlie's transl. § 56, II, p. 262. Apart from the peculiarities of Louisiana law, there would be almost equal difficulty in regarding the agreement as a covenant the burden of which ran with the land according to the principles of the common law, and for substantially the same reason. It is true that the covenant is negative, but it does not benefit the use and occupation of the plaintiff's land physically, and is not intended to. It is intended simply to improve the market value of that land by giving to it a right not to be competed with in the way of railway conveniences. *Norcross* v. *James*, 140 Mass. 188, 192. As to an implied contract, that would be a fiction, and the plaintiff's rights, so far as the question of policy is concerned, would not be enlarged by adopting that form. See *Lincoln* v. *Burrage*, 177 Mass. 378, 380.

Whether the true theory of equitable restrictions is the same as that of covenants running with the land, or different, as their historical antecedents are different in part, it would seem that the two must have somewhat similar limits. With regard to injunctions, we see in Art. 298, 3, of the

Code of Practise cited by the plaintiff, no reason to suppose that the law of Louisiana is peculiar in any way affecting the present case. Whatever the form which the attempt to restrict may take, obviously it is not desirable to allow large tracts of land to be tied up and cut off from the ordinary incidents of ownership, according to the invention of the owner, in perpetuity, in favor of other large tracts which may come by division into many hands. La. Rev. Civ. Code, Art. 656 (652.) See *Parish* v. *Municipality No.* 2, 8 La. An. 145, 169. If such restrictions should be enforced without limit in equity as against all purchasers with notice, the practical result would be an unlimited extension of easements, since notice always can be secured by registration. Easements hitherto have been confined pretty narrowly both in quality and in space. Equitable relief has been refused upon a covenant by a grantee not to open or work a quarry upon his land adjoining the land conveyed, in a suit between assignees of the original grantor and grantee. It was a mere covenant against competition. *Norcross* v. *James*, 140 Mass. 188. On the other hand, a covenant by a grantee not to sell sand from half an acre was enforced against the grantee's son and grantee in favor of the grantor in *Hodge* v. *Sloan*, 107 N. Y. 244, and in old times it would seem that a covenant in connection with a gift of a mill in Tenbury not to raise another mill in Tenbury might have been enforced against the heir of the covenantor. Y. B. 5 Ed. III, 57, pl. 71; *S. C.*, 7 Ed. III, 65, pl. 6, 7. Of course, there are numberless cases in which contracts have been enforced which in a more immediate sense affected the occupation and enjoyment of the quasi dominant land. It is to be noted, too, that the restriction is confined to a narrow strip, which very likely might have been subjected to a servitude of way.

We do not think it necessary to decide whether the foregoing general considerations would be enough to prevent the burden of this agreement falling on the defendant, or whether the allegation which has been quoted, and which means no more than that the defendant bought with notice, is enough to establish a relation of contract or quasi contract between the parties. There are more specific obstacles in the way of the bill. Whether a railroad station shall be built in a certain place is a question involving public interests. Assuming that a contract like the present is valid as a contract, and making the more debatable assumption that the burden of the contract passed to a purchaser with notice, it does not follow that such a contract will be specifically enforced. Illegality apart, a man may make himself answerable in damages for the happening or not happening of what event he likes. But he cannot secure to his contractor the help of the court to bring that event to pass, unless it is in accordance with policy to grant that help. To compel the specific performance of contracts still is the exception, not the rule, and courts would be slow to compel it in cases where it appears that paramount interests will or even may be

interfered with by their action. It has been intimated by this Court that a covenant much like the present should not be enforced in equity, and that the railroad should be left at liberty to follow the course which its best interests and those of the public demand. *Texas & Pacific Ry.* v. *Marshall*, 136 U. S. 393, 405; *Northern Pacific Railroad* v. *Territory of Washington*, 142 U. S. 492, 509. See further *Marsh* v. *Fairbury, Pontiac & Northwestern Ry.*, 64 Ill. 414; *People* v. *Chicago & Alton Railroad*, 130 Ill. 175, 184; *St. Joseph & Denver City Railroad* v. *Ryan*, 11 Kans. 602; *Pacific Railroad* v. *Seely*, 45 Mo. 212; *Florida Central & Peninsular Railroad* v. *Florida*, 31 Fla. 482, 508; *Currie* v. *Natchez, Jackson & Columbus Railroad*, 61 Miss. 725, 731; *Holladay* v. *Patterson*, 5 Oregon, 177; *Texas & Pacific Ry.* v. *Scott*, 23 C. C. A. 424, 429.

The difficulty is illustrated as well as made greater in the case at bar. There is in Louisiana a railroad commission having authority to require all railroads to build and maintain depots. La. Const. 1898, Art. 384. That fact is enough to suggest the possibility of a conflict if an injunction were granted. But further, although it was not pleaded, it was admitted at the bar that the commission had ordered the erection of the station in dispute. It is true that this admission was coupled with charges of improper influence. But such imputations would not be tried or listened to in a collateral proceeding like this. It is apparent therefore that if the facts appeared of record an injunction would be denied, and that as soon as they do appear it must be denied, so that a trial would be an idle form. The bill alleges that there is no public necessity or demand for a depot within the stipulated limit. But this no more could be tried for the purpose of collaterally impeaching the decision of the railroad commission than could the purity of their motives.

It is objected that the foregoing was not the ground of the demurrer. But as was observed by the court below, other grounds are open on demurrer *ore tenus*, and apart from that consideration, if it appears that an injunction would be against public policy, the court properly may refuse to be made an instrument for such a result, whatever the pleadings. The defendant may desire the relief to be granted. It is suggested that it does. But the very meaning of public policy is the interest of others than the parties and that interest is not to be at the mercy of the defendant alone. See *Northern Pacific Railroad* v. *Territory of Washington*, 142 U. S. 492, 509.

Decree affirmed.

Mr. Justice BREWER concurred in the result.

Mr. Justice BROWN took no part in the decision.